

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

RICHARD Z. SAMUELS,)	
)	
Plaintiff,)	4:09CV3092
)	
v.)	
)	
NEBRASKA DEPT. OF CORRECTIONS;)	MEMORANDUM AND ORDER
NEBRASKA STATE PENITENTIARY,)	
Health Services; DR.)	
FREDERICK HATHAWAY,)	
Orthopedic Surgeon,)	
)	
Defendants.)	
_____)	

This matter is before the Court on plaintiff's motion for leave to proceed in forma pauperis on appeal (Filing No. [44](#)). On March 15, 2010, the Court dismissed plaintiff's remaining claims and entered judgment against plaintiff (Filing Nos. [38](#) and [39](#)). On April 1, 2010, plaintiff filed a timely notice of appeal of the judgment (Filing No. [43](#)). Plaintiff is not a prisoner¹ and has previously been granted leave to proceed IFP in this matter (Filing No. [11](#)).

As set forth in [Federal Rule of Appellate Procedure 24\(a\) \(3\)](#):

(a) Leave to Proceed in Forma
Pauperis

(3) Prior Approval. A party who was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal

¹ Plaintiff's notice of appeal and motion for leave to proceed in forma pauperis on appeal indicate that he is no longer incarcerated (Filing Nos. [43](#) and [44](#)).

case, may proceed on appeal in forma pauperis without further authorization, unless the district court -- before or after the notice of appeal is filed -- certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis. In that event, the district court must state in writing its reasons for the certification or finding.

The Court finds that because plaintiff proceeded IFP in the district court, he may now "proceed on appeal in forma pauperis without further authorization."

IT IS ORDERED:

1. Plaintiff's motion for leave to proceed in forma pauperis on appeal (Filing No. [44](#)) is granted.

2. The clerk of the court shall process the appeal and shall provide the Court of Appeals with a copy of this memorandum and order.

3. Plaintiff's motion to stay (Filing No. [40](#)) is denied as moot.

DATED this 4th day of May, 2010.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court